

REMARKS

The finality of the Restriction Requirement has been noted and the Applicants reserve the right to proceed under the provisions of 37 CFR. §1.144.

Claim 18 was rejected under 35 U.S.C. §112, first paragraph, as containing subject matter which was not described in the specification.

In response to this ground of rejection, claim 18 has been amended to delete the references to prophylaxis and treatment. For this reason, the present ground of rejection has been rendered moot and should be withdrawn.

Claims 6 and 18 were rejected under 35 U.S.C. §112, second paragraph as being indefinite for being dependent on a withdrawn claim. In response to this ground of rejection, claims 6 and 18 have been rewritten to be in independent form. The terms "prophylaxis and treatment" have both been deleted from claim 18. For these reason, it is requested that this ground of rejection be withdrawn.

Claims 6, 7 and 18 were rejected under 35 U.S.C. §103 as being unpatentable over Sredni et al. (U.S. 5,475,030).

Reconsideration is requested.

The Examiner has urged that since the prior art discloses that the tellurium compounds are useful for cancer, immune deficiencies, autoimmune diseases and infectious diseases, it

would be obvious that if the tellurium compounds were administered to underweight birds, the compounds would eradicate the birds illness. In view of the deletion of the therapeutic and prophylactic applications and the fact that claim 7 does not claim the treatment of underweight birds, this ground of rejection is not based on any teaching in the cited prior art reference. All of the rejected claims are now directed to enhancing the weight gain or growth of poultry which is not made obvious by the teachings of the therapeutic effects of the tellurium compound. Weight gain and growth promotion of poultry are not predicable phenomena in poultry. The data at page 15 of the specification shows that the invention provides a 5% increase in growth rate which is an unobvious result. For these reasons, it is requested that this ground of rejection be withdrawn.

Claims 6, 7 and 18 were rejected under 35 U.S.C. §103 as being unpatentable over Sredni et al. (U.S. 5,126,149) or Albeck (U.S. 4,761,490) in view of Lowenthal (U.S. 6,642,032).

Reconsideration is requested.

The primary references were applied as disclosing that the tellurium compounds were effective in promoting the production of lymphokines including gamma interferon and Lowenthal was applied as showing the use of gamma interferon for increasing weight gain in birds.

The Lowenthal patent at col. 34, line 8 describes the intraperitoneal injection of birds with gamma interferon in order to enhance growth in healthy birds. There is no disclosure of modifying poultry feed by adding anything to increase weight gain. The lack of any poultry feed modification in Lowenthal or in the primary references points to the complete absence of any teaching or direction to combine the references in the manner that the Examiner has applied these references. The Examiner's comments

regarding four categories of invention are not based on any disclosure in the prior art references. The data at page 15 of the specification shows that a 5% weight gain can be obtained by the practice of the invention. The Examiner has urged that of four categories of "birds", the applicants have only shown unexpected results for one category. It is submitted that there is no basis on which to consider "fully grown" birds because they are not subject of the invention because they are not capable of growing. In addition, the claims are not directed to the treatment of unhealthy birds and for this reason, there is no reason to consider unhealthy birds. The test data on page 15 is persuasive that the use of the tellurium compounds in feed provides a result that could not have been predicted by the teachings of the prior art. For these reasons, this ground of rejection is in error and should be withdrawn.

Claims 6, 7 and 18 were rejected under 35 U.S.C. §103 as being unpatentable over Sredni et al. (U.S. 4,929,739).

Reconsideration is requested.

The amended claims are not directed to the treatment of sick or underweight birds. For this reason, this ground of rejection is in error and should be withdrawn.

Claims 6, 7 and 18 were rejected under 35 U.S.C. §103 as being unpatentable over Sredni et al. (U.S. 5,126,149) or Albeck (U.S. 4,761,490) in view of Lowenthal (U.S. 6,642,032).

Reconsideration is requested.

While Sredni also discloses selenium and tellurium as promoting the production of lymphokines, there is no suggestion

that these compounds should or could be added to poultry feed to increase the growth of poultry. Lowenthal has been noted as having observed that the intraperitoneal use of avian gamma interferon leads to weight gain in poultry. This use fails to suggest the use of the tellurium compounds as a poultry feed additive because the route of administration is different and there is no teaching in Lowenthal that would cause anyone to select a compound that increases many different lymphokines in addition to gamma interferon and thereafter add it to poultry feed for any reason whatsoever. For these reasons, it is requested that this ground of rejection be withdrawn.

An early and favorable action is earnestly solicited.

Respectfully submitted,


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